

98. ELECTRIC UTILITY FRANCHISE

98.01. Definitions. Subdivision 1. As used in this ordinance, the terms defined in this section shall have the following meaning:

Subd. 2. "City" means the City of Rochester, Minnesota.

Subd. 3. "Electric distribution facilities" means any primary or secondary conductor, poles, towers, ducts, and associated pedestals, transformers, connectors, meters, and other fixtures appurtenant thereto, designed to facilitate the distribution of electrical energy to a retail customer.

Subd. 4. "Electrical service" means electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale.

Subd. 5. "People's" means People's Cooperative Power Association, Inc., a Minnesota electric cooperative association.

Subd. 6. "Public Way" means any street or public way open to travel by the public as a matter of right, or a public utility easement created by express grant or dedication.

98.02. Franchise Granted. The City hereby grants People's a non-exclusive franchise to furnish electric service for the purpose of providing light, heat, power, or for any other purpose, within People's service area, as assigned and changed from time to time by the Minnesota Public Utilities Commission, as said service area exists within the corporate boundaries of the City as they now exist or may hereafter be changed. Provided, that the rights granted shall not be construed to permit People's to service an existing customer of the City's public utility department without that department's written consent, unless such service has been authorized by law or ordered by the Minnesota Public Utilities Commission. In furtherance of the rights granted People's herein, it may construct, operate, repair, and maintain electric distribution facilities in, on, over, under, and across public ways within the City. People's may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to zoning ordinances, other applicable ordinances, permit procedures, reasonable regulations, and to the further provisions of this franchise.

98.03. Standards for Electric Distribution Facilities Installed and Maintained by People's. Subdivision 1. Residential Areas. People's shall install and maintain its electric distribution facilities in a residential area underground, utilizing front lot line location. All primary conductors shall be installed in conduit. Each primary circuit, whether serving one or more residential subdivisions, shall be designed and installed as a loop feed; provided however, that if an electric distribution system is being extended into a platted residential subdivision having not more than ten lots or into a development of a ten lot or smaller phase of a larger residential subdivision, and immediate loop feed construction is not economically justifiable, then installation (not design) of the loop feed may be delayed in accordance with an agreement reached between People's and the City, acting through its City Administrator. A circuit serving a residential subdivision shall be designed to accommodate the use of transformers of no less than 25 kVA capacity.

Subd. 2. Individual Service. People's shall be responsible for installation and

maintenance of secondary service only to the property line of the customer. The individual meter installed shall be located at the front of a residential building, or within ten feet of the front of a residential building.

Subd. 3. Street Lighting. When authorized or required by the City, People's shall furnish, install, and maintain such street lighting facilities in the area served by it, as the City shall specify. Such street lighting facilities must comply with standards established from time to time by the City with respect to spacing, quantity and kind of illumination, and design and installation of poles and fixtures. Electricity supplied by People's to street lighting facilities shall be charged to the City at a rate agreed upon by People's and the City. The rate shall cover both energy and amortization of capital investment.

The City reserves the right to furnish and install street lighting facilities itself and to adopt regulations and requirements which would impose upon developers of real estate the obligation to construct at their expense pursuant to approved plans and specifications or pay, in whole or in part, the cost of street lighting facilities needed to serve areas which they develop. Street lighting facilities installed by the City or by developers of real estate will be maintained by the City.

Subd. 4. Other Requirements. Electric distribution facilities shall be located and constructed so as not to interfere with the safe and convenient use of public ways by the public and other public utilities. People's shall coordinate construction or installation of its facilities with other contractors, public utilities, and public agencies working in the same area.

All construction and reconstruction shall be in accordance with plans, specifications, and schedules approved by the City, which approval shall not be unreasonably withheld. People's shall give the Public Services Department of the City ten days' prior written notice of its intention to begin work on the initial construction, reconstruction, or relocation of any of its electric distribution facilities in the City. When circumstances permit, the Public Services Department may waive the ten day requirement. Such notice shall not be required for ordinary maintenance, repair, customer connections, or in emergency situations. The City shall have the right to inspect electric distribution facilities constructed, reconstructed, or relocated by People's.

It is the City's declared policy and intention to serve all electric customers within its corporate boundaries and to acquire People's facilities, customers, and service area rights within the City, as authorized by Chapter 216B of Minnesota Statutes. In furtherance of that policy:

(a) People's shall design and install its electric distribution facilities in a manner which is as compatible as practicable with the City 's electric distribution system and which will permit future integration of People's distribution facilities into the City's system at minimum cost and effort; or

98.04. Field Location. In order to facilitate the continued development of the joint City and Olmsted County Geographic Information System, and to facilitate planning of future extensions of its electric distribution facilities, People's shall provide the City with specific field locations of all electric distribution facilities thereafter installed or relocated in the City at the time of such installation or relocation. Design drawings for all existing People's electric distribution facilities located within the City's corporate limits shall be provided to the Public Utility Department of the City within 60 days after the effective date of this franchise ordinance.

98.05. Street Openings. People's shall not open or disturb the paved or improved surface of any public way for any purpose without first having obtained permission from the City, for which the City may impose a reasonable fee. Permit conditions imposed upon People's shall not be more burdensome than those imposed on other utilities for similar facilities or work. People's may, however, open and disturb the paved or improved surface of any public way without permission from the City where an emergency exists requiring the immediate repair of electric distribution facilities. In such event, People's shall notify the Public Services Department of the City before opening or disturbing a paved or improved surface of a public way. Not later than the second working day thereafter, People's shall obtain any required permits and pay any required fees.

98.06. Restoration. After undertaking any work requiring the opening of any public way, People's shall restore the same, including paving and its foundation, to as good condition as formerly existed, and shall maintain the same in good condition for two (2) years thereafter. The work shall be completed as promptly as weather permits, and if People's shall not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material, and put the surface of the public way in said condition, the City shall have, after demand to People's to cure and the passage of a reasonable period of time following the demand, but not to exceed five (5) days, the right to make the restoration at the expense of People's. People's shall pay to the City the cost of such work done for or performed by the City, including its administrative expense and overhead, plus an additional ten percent of this as liquidated damages. This remedy shall be in addition to any other remedy available to the City.

98.07. Joint Use of Poles. People's shall make space available on its poles and towers for City owned electric distribution facilities and the facilities of other public utilities and cable television companies whenever such use will not unreasonably interfere with the use of such poles and towers by People's. Likewise, the City shall make space available on its poles and towers for People's electric distribution facilities whenever such use will not unreasonably interfere with the use of such poles and towers by the City. Costs incurred by People's or the City related to the use of their poles and towers by others and reasonable rental charges for such use shall be paid in accordance with joint use agreements not existing or hereafter made. It shall be the responsibility of each joint use party to install and maintain its own facilities in accordance with the National Electric Safety Code. The City may install street name signs, no parking signs, and other traffic control signs on People's electric and street light poles at no charge or rental fee.

98.08. Relocation of Facilities. Subdivision 1. Relocation of Electric Distribution Facilities in Public Ways. Except as provided in Subd. 2 of this section, the City determines to vacate a public way, or to grade, regrade, or change the line of any public way, or construct or reconstruct any City utility facilities (except City electric distribution facilities) in any public way, it may order People's to temporarily or permanently relocate its electric distribution facilities located therein. People's shall relocate its electric distribution facilities at its own expense. When vacating a public way, the City may reserve an easement for People's facilities as authorized by §160.29 of Minnesota Statutes, or it may require persons petitioning for the vacation of the public way to pay the cost of relocating People's expense, the City shall reimburse People's for non-betterment cost on a time and material basis less any salvage value derived from the old facilities; provided that if a subsequent relocation is

required because of the extension of City utility facilities (except City electric distribution facilities) to a previously unserved area, People's may be required to make the subsequent relocation at its expense. The City shall give People's reasonable notice of plans and petitions to vacate public way and plans to grade, regrade, or change the line of any public way or to construct or reconstruct any City utility facilities. Nothing in this ordinance shall be deemed to require People's to relocate, remove, replace, or reconnect at its own expense its facilities where such relocation, removal, replacement, or reconnection is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a public way or City utility facilities, or other City improvement.

Subd. 2. Projects with State or Federal Funding. Relocation, removal, or rearrangement of any electric distribution facilities owned by People's made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of §161.46 of Minnesota Statutes. It is understood that the right herein granted to People's is a valuable right and the City shall not order People's to remove, or relocate its facilities when a public way is vacated, improved, or realigned because of a renewal or a redevelopment plan which is financially subsidized in whole or in part by the United States or any agency thereof, unless the reasonable non-betterment costs of such relocation and the loss and expense resulting therefrom are first paid to People's, but the City need not pay those portions of such items for which reimbursement to it is not available.

98.09. Liability. No provision in this ordinance shall be deemed to relieve any person from liability arising out of the failure to exercise reasonable care to avoid damaging electric distribution facilities installed and maintained by People's.

98.10. Tree Trimming. After obtaining a permit from the Park and Recreation Department of the City, and subject to reasonable regulation and supervision by the City, People's may trim all trees and shrubs in the public ways of the City interfering with the proper construction, operation, repair, and maintenance of any electric distribution facilities installed or maintained hereunder, provided that People's shall hold the City harmless from any liability arising therefrom.

98.11. Indemnification. Subdivision 1. People's shall indemnify, keep, and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of its electric distribution facilities located in the City. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, People's plans or work. The City shall not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by People's, and such performance is nevertheless ordered or directed by the City after notice of People's determination.

Subd. 2. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, People's at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given People's within a period wherein People's is not prejudiced by lack of such notice. If People's is required to indemnify and defend, it will thereafter have control of such litigation, but People's may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not as to third parties, a waiver of any defense or immunity otherwise available

to the City; and People's in defending any action on behalf of the City shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

98.12. Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this ordinance. Any governmental unit succeeding the City shall, without the consent of People's, succeed to all of the rights and obligations of the City provided in this ordinance.

98.13. Franchise Fee. Subdivision 1. Established. During the period of this franchise, People's shall pay to the City a franchise fee based upon sales of electricity to all customers served by People's within the corporate boundaries of the City as they now exist or may hereafter be changed. The franchise fee shall be calculated on the same basis as the contributions to the City's general fund made by the City's public utility department. These contributions are currently calculated by multiplying the total number of kilowatt hours of electricity sold times a specified rate which is adjusted annually effective each January 1st to reflect changes in the regional Consumers Price Index during the one year period ending April 30 of the preceding year. The current rate for calendar year 1991 is \$.0052 per kilowatt hour. People's will be notified in advance of the applicable rate for the ensuing calendar year.

Subd. 2. The franchise fee shall be payable monthly. People's agrees to make its electrical sales records available for inspection by the City at reasonable times.

98.14. Rates. Every rate made, demanded, or received by People's for providing electric service to a customer within the City shall be just and reasonable; shall not be unreasonably preferential, unreasonably prejudicial or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers. The rate charged by People's to customers within the City shall be nondiscriminatory in relation to the rate charged to customers outside the City; provided, that an equivalent rate base adjusted by the addition of an amount equal to the franchise fee determined pursuant to Section 98.13, shall be deemed to be nondiscriminatory.

98.15. City Acquisition of People's Electric Distribution Facilities and Customers. If People's elects to provide electric service within the City at a distribution voltage of 12.47 kV during the term of this franchise, and the City thereafter acquires any electric distribution facilities of People's, whether under the provisions set forth in Chapter 216B.44 of Minnesota Statutes, or be initiation of eminent domain proceedings, the City shall not be required to compensate People's for the cost of its transformers or meters, which shall be removed by the City and transported to the City's public utility storage area where they may be retrieved by People's at its convenience. People's shall cooperate with the City and coordinate the change-over of distribution facilities.

98.16. City Intent. It is the City's declared policy and intention to serve all electric customers within its corporate boundaries and to acquire People's facilities, customers, and service area rights within the City, as authorized by Chapter 216B and other Minnesota Statutes. Nothing contained in this ordinance shall be deemed to be a commitment by the City that it will forego, for the term of the franchise herein granted or any other period of time, the right of the City to acquire People's facilities, customers, and service area rights within the City. Nor, shall any provision of this ordinance be deemed to create for People's a right to

provide electric service within the corporate boundaries of the City, or to install and maintain electric distribution facilities to serve customers at retail within the corporate boundaries of the City, which are in addition to rights presently conferred pursuant to Chapter 216B of Minnesota Statutes, or acts amendatory thereto.

98.17. Applicability. The provisions of this ordinance relating to standards for construction of electric distribution facilities and street lights shall apply to all electric distribution facilities and street lights constructed or installed after the effective date of this franchise. The provisions of this ordinance relating to the franchise fee shall apply to all kilowatt hours of electricity sold after the effective date of this franchise, which can be determined by regularly scheduled meter readings and which do not include any kilowatt hours sold before the effective date of this franchise.

98.18. Severability. If any portion of this ordinance or the franchise granted hereunder is found to be invalid for any reason whatsoever, the validity of the remainder shall not be affected.

98.19. Amendment. This ordinance may be amended at any time by the passage of a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing by People's with the City Clerk of a written consent thereto within thirty (30) days after the effective date of the amendatory ordinance. If said amendment is not accepted by People's, such amendatory ordinance shall be null and void.

98.20. Effective Date. The franchise provided in this ordinance is valid for five years from the effective date of this ordinance.

(2643, 7/24/1989; 2680, 02/18/1990; 2739, 7/5/1991; 2756; 8/5/91; 2804, 4/6/92; 3045, 7/2/96; 3426, 11/20/01)